

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 269 OF 2002.

Mr. Antonio De Jesus
Forjaz Dias,
major, married,
resident of House No.25,
Bondir, Santa Cruz, Ilhas,
Goa. ... Petitioner.

VERSUS

1. The Collector,
South Goa District,
Margao, Salcete, Goa.
2. The Deputy Collector,
Land Acquisition,
Collectorate Building,
South Goa District,
Margao, Salcete, Goa.
3. The Executive Engineer,
Div. VI (Roads),
Public Works Dept.,
Fatorda, Margao, Goa.
4. The State of Goa,
(through the Chief Secretary
having his office at
Secretariat, Panaji, Goa).
5. Village Panchayat of
Chinchinim/Deussua,
Salcete, Goa.
6. Joao Domingo Leitao,
Deussua, Chinchinim,
Salcete, Goa. ... Respondents.

Mr. V.A. Lawande, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr.
Mr. P.A. Kamat, Addl. Government Advocate for the
Respondents No.1 to 4.

Mr. M. S. Sonak, Advocate for the Respondent No.5.

CORAM: D. G. DESHPANDE, &
P. V. HARDAS, JJ.

DATE: 4TH FEBRUARY, 2003.

ORAL JUDGMENT: (PER DESHPANDE, J.)

Heard the Advocates for the Petitioner and for the respondents.

2. The petitioner has challenged in this petition the Notifications issued by the Respondents under Sections 4 and 6 of the Land Acquisition Act dated 3rd August, 2001 and 8th July, 2002 respectively, on the ground that issuance of these notices is a colourable exercise and secondly on the ground that the objections raised by the petitioner to the aforesaid acquisition under Section 5-A of the Land Acquisition Act were not properly dealt with and the Government issued the Notification under Section 6 without any report from the authority under Section 5-A of the Land Acquisition Act.

3. So far as the second point of non-compliance to the provisions of Section 5-A is concerned, counsel for the petitioner relied upon the copy of the proceedings and roznama (Exh.P-7) wherein on 10.05.2002 it is noted as under :-

" The objection of Antonio De Jesus Forjaz Dias seeking alignment of the road is overruled. Other parties had no objection. The party Natalina de Jesus Pereira agreed that the road be confined to the perimeter and is to be of only 3 metres width.

The acquiring dept. is to commence work immediately. "

4. Advocate for the petitioner contended, with reference to this roznama, that the authority acting under Section 5-A of the Land Acquisition Act (hereinafter referred to as the Act), had no power to reject the objections raised by the petitioner and his only job was to make recommendations to the Government by submitting the report and since that is not done in this case, the whole acquisition and subsequent issuance of the Notification under Section 6 of the Act becomes illegal.

5. As against this, the Advocate for the respondents pointed out that the petitioner is not coming before the Court with the whole truth because in the affidavit it is clearly mentioned that the authority has submitted its report recommending the acquisition already proposed and therefore there is no merit in the objection raised, since the respondents have made a positive averment regarding submission of the report. In the affidavit of respondent No.2 the Additional Collector it has been specifically stated that the objections under Section 5-A of the Act were considered by the L.A.O. and Report dated 15.5.2002

was submitted to the Government. He also states that the L.A.O. has given hearing to the party on 10.5.2002 wherein some of the parties have given no objection for acquisition as per the record of the Land Acquisition Officer. The joint survey report was also obtained and so far as the petitioner is concerned an area admeasuring 130 sq.mts. from survey No.275/3 was to be acquired. These averments in the affidavit are supported by the copy of the roznama so far as the other aspects are concerned. But since the copy of the roznama is upto 10th May, 2002, admittedly there cannot be a record of sending of report on 15th May, 2002. Since there is compliance to the requirements of Section 5-A in considering the objection and sending the report, we do not find any illegality in the same.

6. The other contention of the petitioner, firstly was that there is no public purpose involved in this case and the acquisition is only for the purpose of benefiting one particular individual. His further contention was that the acquisition is a colourable exercise of the powers and therefore the petitioner has right to challenge the same. Even in this regard the Panchayat, on whose instance the proposal for acquisition was made, has strongly opposed the submissions made by the petitioner and the

grounds taken by him. According to the Panchayat and the affidavit filed by Respondents no.2 and 3, this proposed acquisition is to benefit 11 persons mainly and also others whose names and other particulars have been given in the copy of the plan filed at page 107. The names of the persons who are to be benefited are given and at Serial No.3 is one Forges Dias and along with him are 4 rent holders residing. Counsel for the petitioner contended that Item No.11 which is "Holy Cross" cannot be said to be representing any resident and therefore this cannot be a public purpose. We are totally in disagreement with him, because if "Holy Cross" is there at Sr. No.11, then people are bound to visit the Holy Cross for offering their prayers and inclusion of Holy Cross therefore for the purpose of making out a case for public purpose is not illegal or improper. There is no merit in the objection of the petitioner that in view of this map and affidavit of the respondent and also the Panchayat that the acquisition is to benefit only one person namely Respondent No.6. The acquisition is for public purpose because members of the public, that is 11 persons named in the map with their family members are going to be benefited by this road.

7. In fact, it was also pointed out by the counsel for the respondents that even at present, the

proposed road is being used as a footpath since long. The photographs filed along with this affidavit and map support this contention. Therefore it is not for the first time that any land is being carved out from the land owned by the petitioner and separated. That land is already in use as a road. It is a motorable road and therefore the acquisition is for the purpose of giving it official sanction and for other purposes like making it a tarred road or concrete road. Apart from this, the other persons whose land is going to be affected by the acquisition have given their consent.

8. The petitioner could not point out anything on record as to how the proposed acquisition is a colourable exercise and is only to benefit only one individual i.e. Respondent No.6. His objections were considered by the L.A.O., but even thereafter he supported the acquisition and made a representation to the Government by Report dated 15th May, 2002 and consequently the Notification under Section 5A came to be issued.

9. When therefore procedure prescribed by Section 5A is followed, when the authorities are satisfied that it is a public purpose, when the land is already being used as a road, when the others who are affected have given their consent and when the

Gram Panchayat have also by their earlier Resolution as well as by subsequent Resolution, made out a case for acquisition, then we do not find any merit in this petition.

10. Counsel for the petitioner contended that the Land Acquisition Officer had no right or authority to overrule the petitioner's objections and he was only required to take the objections and make recommendations. Maybe there is force in what the petitioner contends because in his noting dated 10th May, 2002 the Land Acquisition Officer has stated that the objections of the petitioner about alignment of road is overruled. But the matter did not end there. He made the report as required under Section 5A, upon which the Government after being satisfied of the purpose of acquisition and the benefit to which the land was going to be put, issued the Notification under Section 6 of the Act, gives finality to the acquisition.

11. Affidavit is also filed on behalf of the Respondent No.5 Village Panchayat. They have denied the allegations of the petitioner about malafides and ulterior motives on the part of the Village Panchayat. They have also vehemently denied that the acquisition is for the benefit of one individual i.e. Respondent

No.6. The Village Panchayat has stated in their affidavit that there was a Resolution dated 30th March, 1992 passed by the Village Panchayat as per Exh.9 Colly., that the proposed Bamado Road would be beneficial to at least 11 families. The Village Panchayat also found that the complaint made by the petitioner was groundless and unfounded and they have also stated that taking into consideration the proposed acquisition, Village Panchayat issued two permissions relating to the constructions, and one of such permissions was given to the petitioner's wife. The Village Panchayat also stated that in their meeting dated 30.09.2000 reiterating the Resolution dated 30.03.1992 was passed as per Exhibit 'I'.

12. Considering therefore all the circumstances, we do not find any merit in this petition. The petition is dismissed with costs.

D.G. DESHPANDE, J.

P.V. HARDAS, J.

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